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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/668,110
Filing Date: September 22, 2000
Appellant(s): KRIEGSMAN ET AL.

Faustino A. Lichauco
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/25/08 appealing from the Office action mailed 2/13/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

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The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6799248	Scherr	9-2004
5933837	Kung	8-1999
5870539	Leshem et al	2-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-5, 8-16, 19-23 and 26-28 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,799,248 to Scherr.

a. As per claims 1 and 19, Scherr et al teaches a method for enabling the generation of an updated web-page for storage in one of a plurality of cache servers said method comprising: implementing programmable rule executing on each of the plurality of cache servers (See col. 5, lines 1-2, *cache management being installed at various sites on network*), each programmable rule defining a triggering event associated with its corresponding cache server (See col. 5, lines 49-65 and col. 6, lines 1-42) the occurrence of the triggering event being indicative of the existence of an obsolete portion of said web-page stored in said corresponding cache server (See col. 5, lines 49-65 and col. 6, lines 1-42, *cache management system can be configured to use either a page cache management, data usage frequency, page usage or data usage pattern, time frequency method*) ; detecting an occurrence of a triggering event at a particular cache server

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selected from the plurality of cache servers; in response to the occurrence of said triggering event, causing said particular cache server to request an update of a corresponding obsolete portion; and receiving an updated portion of said web-page for storage at said particular cache server (See col. 5, lines 49-65 and col. 6, lines 1-42).

b. As per claim 13, Scherr et al teaches a web-serving system comprising: a plurality cache servers having a corresponding cache memory and a cache manager in communication with said corresponding cache memory for controlling said content of said corresponding cache memory (See col. 5, lines 16-29), said cache manager being configured to execute a programmable script, said script being configured for detecting the occurrence of a triggering event (See page 8, paragraph [0074]), and in response to detection of said triggering event, causing said cache manager to request and update of said content said cache memory (See page col. 5, lines 49-65 and col. 6, lines 1-42).

c. As per claims 2 and 20, Scherr et al teaches generating a web-page incorporating said updated portion therein and serving said web-page to a user (See col. 6, lines 5-42).

d. As per claims 3 and 21, Scherr et al teaches wherein implementing said programmable rule comprises interpreting a script containing instructions for defining a rule (See col. 3, lines 54-65).

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e. As per claims 4 and 22, Scherr et al fails to teach wherein detecting said triggering event comprises detecting an elapsed time defined by said programmable rule (See col. 6, lines 5-23)

f. As per claims 5 and 23, Scherr et al teaches wherein detecting said triggering event comprises detecting the receipt of an updated portion of said web-page (See col. 3, lines 50-65).

g. As per claims 8 and 26, Scherr et al teaches wherein causing said particular cache-server to request an update comprises establishing communication with an origin server and causing said particular cache server to request said update therefrom, and receiving an updated portion comprises receiving said updated portion from said origin server (See col. 8, lines 44-47)

h. As per claim 9, Scherr et al teaches wherein comprising a cache memory element separate from said origin server (See col. 5 and figure 1a)

i. As per claim 10, Scherr et al teaches comprising a cache memory element at said origin server (See col. 5 and figure 1a).

j. As per claims 11, 14 and 27, Scherr et al teaches the claimed invention as described above. Furthermore, Scherr et al teaches wherein collecting access-data

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indicative of how frequently said web-page is requested (See col. 3, lines 54-60 and col. 5, lines 49-60).

k. As per claim 12 and 28, Scherr et al teaches the claimed invention as described above. Furthermore, Scherr et al teaches managing the content of caches in said cache servers in response to said access-data (See col. 3, lines 54-60 and col. 5, lines 49-60)

l. As per claim 15, Scherr et al teaches the claimed invention as described above. Furthermore, Scherr et al teaches wherein said usage-monitor provides said access data to said programmable script, and said programmable script alters said content of said cache memory in response to said access-data (See col. 5, lines 49-60).

m. As per claim 16, Scherr et al teaches the claimed invention as described above. Furthermore, Scherr et al teaches a communication path between said programmable script and an administrator process, said communication path enabling said programmable script to receive instructions from said administrator process (See col. 5, lines 62-63).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 6 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,799,248 to Scherr et al in view of U.S. Patent No. 5,933,837 to Kung.

a. As per claims 6 and 24, Scherr et al teaches the claimed invention as described above. However, Scherr et al fails to teach wherein requesting an updated portion of said web-page comprises formulating a database query to be carried out by a database engine.

Kung teaches an apparatus and method for maintaining integrated data consistency across multiple databases. Furthermore, Kung teaches wherein requesting an updated portion of said web-page comprises formulating a database query to be carried out by a database engine (See col. 2, lines 39-64).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the teaching of Kung in the claimed invention of Scherr et al in order to accurately and promptly synchronizes heterogeneous databases in a network (See col. 2, lines 30-32).

8. Claims 7, 17 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6, 799,248 to Scherr et al in view of U.S. Patent No. 5,870,559 to Leshem et al.

a. As per claims 7, 17 and 25, Scherr et al teaches the claimed invention as described above. However, Scherr et al fails to teach wherein said web-page comprises,

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in addition to said updated portion, a plurality of constituent portions and said method further comprises providing an assembly script containing instructions for assembling said constituent portions and said updated portion into said web-page.

Leshem et al teaches wherein said web-page comprises, in addition to said updated portion, a plurality of constituent portions and said method further comprises providing an assembly script containing instructions for assembling said constituent portions and said updated portion into said web-page (col. 3, lines 30-63).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the teaching of Leshem et al in the claimed invention of Scherr et al in order to facilitate the management and analysis of WWW sites and other types of database systems which utilize hyperlinks to facilitate user navigation (See col. 1, lines 21-25).

(10) Response to Argument

Rejection of Claim s 1, 13 and 19

In reference to the passage of a pre-selected time, The Examiner agrees obsolescence can attain an object at any time. However, one method proposed by Appellant to address this disadvantage is a programmable script that causes the cache manager to update the web page upon the occurrence of a triggering event. The script is freely programmable and the triggering event can be any event that can be defined by the script. One such triggering event is a "the passage of a selected amount of time (See page 6, lines 3-15). The Examiner directs attention to Appellant's Specification, which limits the "triggering event" to the passage of a selected amount of time (See page 6, lines 8-9 of the specification). Thus, the script can be programmed to update an obsolete web

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page after a predetermined time has elapsed. Therefore, the Examiner believes that the subject matter representative of claims 1, 13 and 19 are within the admitted prior art.

In addition to the predictable time as the triggering event, Appellant argues that "the triggering event" such as a user logging on can not possibly be regarded as "indicative of the existence of an obsolete portion" of any web page". As cited by Appellant, Scherr teaches "For example, if most of the internal users are likely to request pages from the same website, when they first log on, cache management system 10 at local site 06 could be configured **to pre-fetch web pages from the requested site each time an internal user logs on** and those pages are not already in cache storage."

Appellant is taking the "log on" concept out of context to dispute the teaching of Scherr. Scherr clearly teaches that when the user log on, the system pre-fetches a web page that is likely to be requested by the user. The system of Scherr is able to identify, the user logging on or data pattern, and on the basis of that triggering event pre-fetch a particular web page (See col. 6, lines 24-42). The triggering event of the user "logging on" will activate the system to obtain an updated web page. In support of this position, the Examiner relies on Page 6 (lines 26-29) of Appellant' specification " a script determines that a particular web-page has become, or is about to become more popular, it can instruct the cache manager to request copies of the constituent objects of that web page for storage in the cache memory". Claims 13 and 19 include limitations that are similar to claim 1.

Rejection of Claims 3 and 21

Claim 3 teaches "implementing rules comprises interpreting a script containing instruction for defining a rule". Scherr teaches "These and other objects are achieved by

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a network accelerator storage caching system that may be inserted at any point in a network, to provide a configurable, scalable variety of cache management systems to improve response time. Depending on the configuration(s) selected, the system may manage data or subsets of data in a storage cache on the basis of time-currency, page usage frequency, charging considerations, pre-fetching algorithms, data-usage patterns, store-through methods for updated pages, least recently used method, B-tree algorithms, or indexing techniques (*programmable rules*) including named element ordering, among others. A preferred embodiment may embed the configurable cache management in the storage media, either as firmware in a storage controller or as software executing in a central processing unit (CPU) in a storage controller (See col. 3, lines 50-65). The cited passage inventories the various rules that can be defined in the programmable system. Various passages of Scherr describe interpreting a script in relation to a programmable rule: Col. 7, lines 16-19 of Scherr described using usage pattern as the programmable rule in the script in order to update a web page; Fig 12 shows a script updating a web page after the passage of a predefined time interval. Therefore, the Examiner believes that the subject matter representative of claims 3 are within the admitted prior art. Claim 21 includes limitation similar to claim 3.

Rejection of Claims 5 and 23

Scherr teaches “updates would be sent to a local site by the service provider as they occur and without being solicited by a file transfer request from the local cache management system” (See col. 11, lines 53-56). The above passage clearly teaches wherein local cache is updated by the service provider upon detecting an update.

Rejection of Claims 8 and 26

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Appellant argues that Scherr fails to teach the limitation of “requesting an update portion from an origin server and receiving the update portion from that origin server”. However, Scherr clearly teaches wherein “if it is determined that the data is not already in the cache, a request will be made to fetch the data from the network at step 34”. Furthermore, Scherr teaches wherein “if the data is not within the time-stamp parameters. A new fresh copy is requested from the network by going to step 34”. To be more specific, Scherr teaches wherein " A simple variation of the time-sensitive method might include a **request** that nothing cached be out of date more than some specified period of time. Very little network traffic is generated by simply **requesting the version number or creation data of a web page**, instead of the entire page or site (See col. 8, lines 44-67 and col. 9, lines 1-25). The algorithm in Fig 2A not only describes the when the requested data is available or not, but also describes **requesting** a fresh copy when the data is not within the time-stamp parameters.

Rejection of Claim 16

As per claim 16, Scherr clearly teaches wherein the administrator of backbone link (*communication path*) might prefer to configure its cache management system to use page usage or data usage pattern (See col. 5, lines 62-63). Furthermore, Scherr teaches wherein the administrative decision and actions could also be done by an expert system dynamically (See col. 5, lines 65-67). As previously demonstrated by the Appellant and the Examiner, Scherr teaches programmable script. Therefore, this passage of Scherr teaches the relation among the script, the administrative decisions and actions, and the backbone link or communication path.

Claims 6 and 24

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As per claims 6 and 24, Scherr does not teach a "formulating a database query". However, Scherr teaches requesting an updated portion of said web-page (See col. 8, lines 44-67 and col. 9, line 1-25). The prior art of Kung was introduced to teach "formulating a database query". In response to Appellant argument that the primary system of Kun does not request updates, it provides updates, Appellant is reminded although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In this case the claimed limitation fails to specify what system formulated the database query to be carried out, the origin server (*primary server of Kung*) or the cache servers. Furthermore, in relying on Appellant's Specification on page 3, lines 17-20, "The origin server 12 supports a database engine 18 for formulating and executing queries in response to instructions issued by an administrator process 20, also supported by the origin server". Therefore, contrary to Appellant's argument, the origin server (*primary server of Kung*) formulates and executes the queries.

The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the combination of Scherr in view of Kun would have produced a system requesting an updated portion of said web-page that comprises formulating a database query to be carried out by a database engine.

Claims 7, 17 and 25

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In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Djenane Bayard

/D. M. B./

Examiner, Art Unit 2441

/William C. Vaughn, Jr./

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